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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**OCT 31 1996**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In the Matter of	)	
	)	
Implementation of The Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	
	)	
Interconnection Between Local	)	CC Docket No. 95-185
Exchange Carriers and Commercial	)	
Mobile Radio Service Providers	)	

To: The Commission

**DOCKET FILE COPY ORIGINAL**

**COMMENTS OF AIRTOUCH COMMUNICATIONS, INC. ON  
PETITIONS FOR RECONSIDERATION**

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### SUMMARY

AirTouch Communications, Inc. ("AirTouch") hereby comments on the petitions filed with respect to the First Report and Order on interconnection (the "First Report"). AirTouch supports the petitions which request the Commission to further define the duty to negotiate interconnection arrangements in good faith. Additional measures should be adopted to ensure that local exchange carriers ("LECs") comply with this duty. The Commission should require LECs to provide access to existing agreements before they are filed with the state, advance the filing deadlines associated with those agreements, adopt a timetable for the expedited process provided for by Section 252(i), and preclude LECs from using onerous demands and threats against CMRS providers.

AirTouch opposes certain of the petitions requesting that the Commission reconsider some of the fundamental principles governing LEC-CMRS interconnection. As the Commission correctly concluded, all CMRS providers, including paging providers, are entitled to compensation for terminating traffic. The petitions opposing paging termination compensation do not raise any new statutory or public policy rationale which would support the exclusion of paging companies from the compensation mechanism. CMRS

providers also are entitled to compensation from the interconnecting LEC when traffic originates on another network, traverses the LEC's network, and terminates on the CMRS provider's network.

AirTouch also opposes those petitions seeking to revise local calling areas to conform to wireline calling areas. CMRS carriers should be permitted to associate NXXs with points other than the serving wire center, serving central office, or point of interconnection. Also, the Commission should affirm its decision that CMRS carriers are not LECs.

AirTouch supports those petitions requesting that the Commission clarify that it has independent jurisdiction over LEC-CMRS interconnection pursuant to Sections 2(b), 201 and 332. Finally, the Commission should clarify that the access to utility facilities is triggered by internal communications and/or use of any facility for wire communications, and extends to wireless equipment.

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To:       The Commission

**COMMENTS OF AIRTOUCH COMMUNICATIONS, INC. ON  
PETITIONS FOR RECONSIDERATION**

AirTouch Communications, Inc. ("AirTouch"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules,<sup>1/</sup> hereby submits its Comments on the Petitions for Reconsideration filed with respect to the First Report and Order<sup>2/</sup> ("First Report") adopted by the Commission in the captioned proceeding. The following is respectfully shown:

**I. Preliminary Statement**

1. AirTouch Paging, a wholly owned subsidiary of AirTouch, filed a Petition for Partial Reconsideration and/or Clarification with respect to the First Report.<sup>3/</sup> Several of the positions set forth in AirTouch Paging's petition are echoed by other petitioners, so AirTouch will not reiterate here the points made in the petition, but instead indicates its support of the petitions filed by Arch

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<sup>1/</sup> 47 C.F.R. §1.429.

<sup>2/</sup> FCC 96-325.

<sup>3/</sup> AirTouch Paging is the fourth largest paging company in the United States with over 2,735,000 units in service.

Communications Group, Inc. and Paging Network, Inc.<sup>4/</sup>  
AirTouch will address the issues raised in the other  
petitions in the order that the issues were organized and  
discussed in the First Report.

**II. The Duty to Negotiate Interconnection  
Arrangements Should Be Further Defined  
As Requested By Petitioners**

2. The First Report identified factors and  
practices which the Commission may consider to be evidence  
of a failure to negotiate interconnection arrangements in  
good faith as required by the Communications Act.<sup>5/</sup>  
AirTouch generally supports the Commission's guidelines as  
being critical to the establishment of basic ground-rules  
for good faith negotiations, but does agree with the  
petitions which seek to expand the types of practices which  
will be considered evidence of a LEC negotiating in bad  
faith.

3. The Association for Local Telecommunications  
Services ("ALTS"), Comcast Cellular Communications, Inc. and

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<sup>4/</sup> Petition for Limited Reconsideration filed by Arch  
Communications Group, Inc. (Commission should establish  
an interim proxy rate for paging-only carriers) and  
Petition for Limited Reconsideration filed by Paging  
Network, Inc. (Commission should find that paging  
carriers provide telephone exchange services and that the  
Commission should accord paging carriers the same  
treatment in terms of terminating compensation rates and  
default proxies as other CMRS providers).

<sup>5/</sup> First Report ¶¶ 142-156.

Vanguard Cellular Systems, Inc. ("Comcast/Vanguard"), and Pilgrim Telephone, Inc. ("Pilgrim") have requested that specific additional measures be adopted to ensure that LECs comply with the duty to negotiate in good faith. ALTS requests that LECs be required to provide requesting carriers access to existing interconnection agreements even before those agreements are required to be submitted to state commissions, and that the failure to do so be deemed a violation of the duty to negotiate in good faith.<sup>6/</sup> Comcast/Vanguard request that the Commission advance filing deadlines associated with incumbent LECs' duty to file existing agreements.<sup>7/</sup>

4. AirTouch supports the ALTS and Comcast/Vanguard positions. Access to existing agreements, whether or not filed with the state commission, will enable parties to a

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<sup>6/</sup> Petition for Clarification and Reconsideration by the Association for Local Telecommunications Services pp. 9-10. ALTS also requests that the Commission amplify its statement that carriers may request and obtain portions of interconnection agreements on an expedited basis. ALTS suggests that the approval of such requests should take no more than 30 days, since carriers are not bound by the timetable contained in Section 252, and the agreement in question will have been approved by the state commission already. AirTouch agrees with ALTS -- approval for the selection of particular portions of a previously approved agreement should not require more time than approval of the agreement itself.

<sup>7/</sup> Joint Petition for Reconsideration and Clarification, filed by Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc., pp. 19-22.

negotiation to determine whether the rates, terms and conditions on which interconnection and other services are being offered are just and reasonable, and should help to level the bargaining power of the parties to the negotiation.<sup>8/</sup> As long as the agreements are effective, no prejudice would result to the LECs for having to make the agreements available.<sup>9/</sup> This goal would be fostered further by a Commission action requiring prompt filing of existing agreements by incumbent LECs.

5. Pilgrim requests that the Commission declare that actions by LECs, such as requiring carriers requesting access to LEC networks to provide volumes of information, and threats of termination, breach and assessment of additional costs be deemed to violate the LEC's duty to negotiate in good faith.<sup>10/</sup> AirTouch agrees. Commercial

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<sup>8/</sup> To some extent this also buttresses the Commission's conclusion that "the parties should be required to provide information necessary to reach agreement. First Report ¶ 155. This will also serve to minimize any possibility that a LEC may mislead CMRS carriers during the negotiation process.

<sup>9/</sup> As a companion conclusion, the Commission should conclude that a LEC may not enter into an interconnection agreement and later be able to refuse to provide it to others on the basis that it is confidential or proprietary.

<sup>10/</sup> Petition for Partial Reconsideration, or in the Alternative, Clarification, filed by Pilgrim Telephone, Inc., pp. 7-8.



Mobile Radio Service ("CMRS") providers frequently have been the victims of incumbent LECs' assertion of market power.<sup>11/</sup> Despite the requirements of the First Report, AirTouch has nonetheless experienced difficulties in renegotiating existing interconnection arrangements to bring them into compliance with the Communications Act.<sup>12/</sup> Protections, such as those requested by Pilgrim, should provide CMRS carriers with the ability to request renegotiation and redefinition of the terms of existing agreements without falling prey to onerous requests, monetary liability and potential discontinuance of service.

### **III. The Principles Governing LEC-CMRS Interconnection Should Be Affirmed**

6. In the First Report, the Commission found that all telecommunications carriers are entitled to compensation for the transport and termination of traffic which does not originate on their network. The Commission required LECs to "establish reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's

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<sup>11/</sup> The record established in this proceeding amply demonstrates this.

<sup>12/</sup> The First Report required LECs to renegotiate with CMRS carriers existing arrangements at the request of the CMRS carrier. First Report, ¶ 1094.

networks."<sup>13/</sup> The Commission also ordered LECs to cease charging CMRS carriers for terminating LEC-originated traffic and to provide that traffic to CMRS providers without charge.<sup>14/</sup> The First Report is clear that the statutory obligation to establish reciprocal compensation arrangements extends to all CMRS providers, including CMRS paging providers.<sup>15/</sup> Notwithstanding this explicit inclusion, some petitioners seek to exclude CMRS paging providers from the reciprocal compensation provisions adopted in the First Report. AirTouch strenuously opposes these petitions.<sup>16/</sup> They are inconsistent with the plain language of the Communications Act, prior Commission policies, and the public interest.

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<sup>13/</sup> First Report ¶ 1008 (emphasis added).

<sup>14/</sup> First Report ¶ 1042.

<sup>15/</sup> The only issues remaining open in the First Report are what an appropriate proxy for paging carriers should be, and, if necessary, what the default proxy rate should be. First Report ¶ 1093.

<sup>16/</sup> AirTouch notes that GTE has made a filing in the state of California claiming that paging providers are not entitled to reciprocal compensation because they do not provide telephone exchange service. AirTouch disagrees with this assertion on two fronts: first, paging service is telephone exchange service; second, paging providers are entitled to reciprocal compensation even absent a finding that they provide telephone exchange service. GTE's filing highlights the need for the Commission to explicitly reaffirm that paging providers are entitled to reciprocal compensation.

7. Kalida Telephone Company ("Kalida")<sup>17/</sup> asserts that paging companies<sup>18/</sup> should not be compensated for terminating LEC-originated traffic because traffic is not originated on the paging network and because, in some flat rate universal service areas, LECs allegedly would not be able to recover the costs of compensating paging carriers for termination.<sup>19/</sup> Kalida does not raise any new issues or public policy reasons to support its position -- each of these reasons was addressed, and rejected, by the Commission in the First Report. For example, the Commission explicitly required LECs to establish reciprocal compensation arrangements with all CMRS providers, including paging providers.<sup>20/</sup> In addition, the Commission found that "LECs have a duty to establish reciprocal compensation

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<sup>17/</sup> It is interesting to note that the certificate of service attached to Kalida's petition was signed by an employee of SBC Communications, Inc. and the petition was mailed in an SBC envelope. The Commission may want to determine what the nature and extent of SBC's role is in Kalida's filing.

<sup>18/</sup> Although Kalida's petition is unclear, AirTouch presumes that Kalida opposes terminating compensation to all paging carriers, including CMRS paging carriers.

<sup>19/</sup> Petition for Reconsideration and Clarification filed by Kalida Telephone Company, Inc., pp. 2-8; see also Petition of the Local Exchange Carrier Coalition ("LECC"), pp. 17-18.

<sup>20/</sup> First Report ¶ 1008.

arrangements with respect to local traffic originated by or terminating to any telecommunications carriers."<sup>21/</sup> The Commission's decision reflects that, regardless of the direction and balance of traffic flow, any telecommunications carrier terminating traffic that originates on another carrier's network is providing a service to the originating carrier and is incurring costs to transport and terminate that traffic.<sup>22/</sup> The carrier must be compensated for the services it performs.<sup>23/</sup>

8. With respect to Kalida's suggestion that it will be unable to recover its costs in flat-rated universal service areas, the Commission has ruled that LECs may not recover universal service costs through interconnection charges.<sup>24/</sup> Thus, LECs should not be permitted to turn the Commission's compensation mechanism on its head in an effort

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<sup>21/</sup> First Report ¶ 1041 (emphasis supplied).

<sup>22/</sup> The First Report seems to adopt two carrier models of interconnection. As AirTouch Paging pointed out in its petition, the real market will consist of multiple interconnected carriers -- more akin to the existing interconnection arrangements.

<sup>23/</sup> Of course, if the LEC is acting as a conduit for an interconnecting carrier's traffic, the terminating carrier would be paid by the LEC, and the LEC would receive compensation from the next telecommunications carrier up the line for its own services and the payments it has to make to the terminating carrier.

<sup>24/</sup> First Report ¶ 712.

to recover the costs of providing universal service from interconnection charges.<sup>25/</sup>

9. Kalida and the Local Exchange Carrier Coalition ("LECC") also assert that compensating paging providers for traffic termination would work as a subsidy to paging companies and would encourage paging providers to generate phony traffic.<sup>26/</sup> These claims lack merit. The compensation mechanisms adopted by the Commission are intended to provide telecommunications carriers with an amount which is a reasonable approximation of the costs associated with providing the services rendered.<sup>27/</sup> Thus, the compensation does not subsidize paging providers for the services they provide to their own paging customers --

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<sup>25/</sup> Indeed, for calls terminating on a CMRS network, flat-rated local calling rates already include payment for services which are not performed by the LEC, but rather by the CMRS carrier. Payment of compensation to a CMRS carrier for the services it performs will not detract from the amounts of money available to the LEC for the services it actually provides.

<sup>26/</sup> Petition for Reconsideration and Clarification filed by Kalida Telephone Company, Inc., pp. 8-9; Petition of the Local Exchange Carrier Coalition, pp. 17-19.

<sup>27/</sup> First Report ¶ 1008. With respect to paging, the Commission contemplates requiring paging carriers to submit cost data to demonstrate the costs associated with these services, and has excluded paging providers from both the default proxy rates and symmetrical compensation policies adopted which benefit other CMRS providers. First Report ¶ 1092.

rather, it compensates paging providers for transport and termination services performed for the LEC that enable the LEC's subscriber to call a paging subscriber.<sup>28/</sup> Under these circumstances, the incentive to generate phony traffic simply does not exist.<sup>29/</sup>

10. Kalida's and LECC's assertions are ill-conceived for an additional reason. The same argument could be made with respect to all telecommunications carriers who are compensated for transport, switching and termination

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<sup>28/</sup> The current interconnection scheme causes the paging carrier to subsidize the LEC. For a LEC-originated call, the LEC collects twice for that portion of the network connecting the serving wire center to the CMRS switch and for the switching that is performed by the local end office. First, it collects the amount from the calling party through its calculation of the flat rate. Second, it collects the amount from the CMRS carrier. This double recovery is exactly what Kalida and LECC want to preserve and the Commission should reject.

<sup>29/</sup> Although similar arguments were made in the payphone compensation proceeding, the Commission nonetheless decided to provide payphone providers with compensation for calls. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC 96-388 (Released September 20, 1996) at ¶65 ("Contrary to suggestions by some commenters, it is not necessary, nor would it be in the public interest, for the Commission to select a particular method of per-call compensation ... simply to avoid the possibility of fraud."). As the Commission found in that proceeding, the Commission has ample authority to deter this behavior through civil enforcement action. Id.

services.<sup>30/</sup> Thus, the concerns aired by Kalida and LECC would not be addressed by excluding solely paging companies from the reciprocal compensation scheme adopted by the Commission.<sup>31/</sup>

11. Kalida also attacks compensation to CMRS providers with respect to calls which originate on another LEC's network, traverse Kalida's network, and terminate on a CMRS network. Kalida argues that it should not be responsible for compensating the CMRS provider in such instances. AirTouch disagrees.<sup>32/</sup> Kalida should be

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<sup>30/</sup> Every telecommunications carrier, including the LECs, could generate phony traffic on the other party's system to generate larger compensation amounts for itself.

<sup>31/</sup> In fact, paging carriers may be interconnected with parties other than the LEC, such as CLECs, and the CLEC will be compensated by the LEC.

<sup>32/</sup> Section 51.703 of the Commission's Rules precludes LECs from assessing charges on other telecommunications carriers for traffic which originates on the LEC's network. The Commission should expand its rules to provide explicitly that this principle applies regardless of the identity of the originating network. In other words, if a LEC has an interconnection agreement with a CLEC and the CLEC originates a call to a CMRS carrier interconnected with the LEC, the LEC should not be permitted to assess against the CMRS carrier any costs of handling that call. All costs associated with completing the call should be borne by the originating CLEC, and the terminating compensation should be split between the LEC and the CMRS carrier. AirTouch reads Sections 51.703(b) and 51.709(b) to dictate to some extent how the costs  
(continued...)

compensated by the originating LEC for all services Kalida provides with respect to delivery of the traffic to the CMRS network and for the costs Kalida will bear to terminate the call on the CMRS network. The CMRS carrier should then be compensated by Kalida for the transport and termination functions it provides in order to deliver the traffic to the called party (a portion of the total amount that Kalida would collect from the originating LEC).<sup>33/</sup> Any other arrangement would compensate Kalida for services it does not even perform, and require CMRS companies to go uncompensated for their services. Clearly, this is not envisioned by the First Report.

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<sup>32/</sup> (...continued)

are to be allocated among the interconnecting carriers. For instance, for CMRS carriers, AirTouch believes that Section 51.709(b) provides that the LEC should bear all costs and expenses associated with the transport of LEC-originated (or interconnecting carrier's originated) traffic from the LEC's facilities to the CMRS switch.

<sup>33/</sup> This compensation mechanism should work for all calls placed on the network, regardless of whether they are intraLATA or interLATA. For instance, for an interLATA call, the interexchange carrier would pay the LEC for the access it provides, and the LEC would in turn pay the terminating CMRS carrier for the transport and termination functions the CMRS provider performs. The Commission should avoid any payment scheme which would require the terminating carrier to negotiate with other carriers with which it does not have any interconnection arrangements or is not interconnected with for the call being terminated.



12. LECC argues that CMRS providers should be required to pay access charges for calls which have been defined by the FCC as local -- i.e., those which originate and terminate in the same MTA. LECC bases this argument on a contention that all carriers, regardless of their service areas, should adhere to the wireline local calling areas for purposes of determining when the transport/termination or access provisions of the Commission's Rules apply. Such a suggestion is contrary to the public interest. The application of wireline calling areas to CMRS services would convert service which has traditionally not been subject to access charges into service requiring payment of access charges, which would require customers to pay more for the service.<sup>34/</sup> Wireline and wireless services are not identical -- competing carriers will market the differences in their services based upon service area, price, type of service offerings, quality of service, etc. There is no support in the record for eliminating the difference in service areas between wireline and wireless services to

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<sup>34/</sup> As the Commission correctly observed, the appropriate calling area is a Major Trading Area (MTA) or larger (in the case of CMRS paging services). First Report ¶ 1036.

eliminate the competition which arises from such distinctions.<sup>35/</sup>

13. Several CMRS providers have demonstrated why CMRS calling areas should continue to be defined separately from wireline calling areas. AirTouch supports those portions of the petitions filed by Comcast/Vanguard<sup>36/</sup> and Cox Communications, Inc.<sup>37/</sup> which recommend that CMRS providers be permitted to associate NXX codes with points other than the point of interconnection or the switch.<sup>38/</sup>

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<sup>35/</sup> It appears that the real rationale behind LECC's request is that the LEC would like to impose the access fee as a way of subverting the Act's requirement that CMRS carriers are paid terminating compensation. Under the LECC suggestion, the CMRS carrier would be paid by the LEC for transport and termination of calls, but would end up paying that amount plus more to the LEC in access charges. This clearly is contrary to the public interest and is not supported in the Act.

<sup>36/</sup> Joint Petition for Reconsideration and Clarification, filed by Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc., pp. 11-14.

<sup>37/</sup> Petition for Reconsideration and Clarification of Cox Communications, Inc., pp. 8-11.

<sup>38/</sup> In an unrelated pleading, AT&T requests that the Commission establish a rebuttable presumption that the forward looking cost of any non-recurring activity that can be accomplished through software or electronic means is \$5. Petition of AT&T Corp. for Reconsideration and/or Clarification, pp. 18-19. AirTouch supports this request, and agrees that many of the changes requested of incumbent LECs require simply the push of a few buttons. The resultant  
(continued...)

CMRS providers have designed their networks to function in a manner that can most efficiently and effectively handle their telecommunications traffic. LEC rating and routing constraints should not dictate these CMRS network designs.<sup>39/</sup> This flexibility is necessary to ensure that CMRS traffic traditionally not subject to access charges does not become subject to access charges as a result of the First Report. This request is consistent with the Commission's intent that "CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for

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<sup>38/</sup> (...continued)

charges assessed frequently do not reflect the effort expended in making the requested changes.

<sup>39/</sup>

Currently, CMRS providers take interconnection from the LECs as either Type 1 (end office) or Type 2 (tandem). Since each serving office has a local wireline calling area, most LECs offer a "reverse billing option" for Type 2 that allows the CMRS carrier to pay the LEC for the transport of calls from the originating central office to the tandem; thus, eliminating any LATA toll charges to the calling party. Some of the LECs have proposed eliminating this reverse billing option. Comcast/Vanguard's request would allow CMRS carriers to associate tandem numbers with serving central offices -- this would allow for a more efficient use of the network and would also reduce to a large extent the need for the reverse billing option.

traffic that is currently subject to interstate access charges."<sup>40/</sup>

14. Finally, the Public Utilities Commission of the State of Colorado ("PUCC") urges the Commission to reconsider its decision not to treat CMRS providers as LECs, and indicates its intention to treat some CMRS providers as LECs.<sup>41/</sup> PUCC's request is procedurally untimely, and its stated course of action is directly at odds with the First Report. The Commission declined at this time to find that CMRS providers should be treated as LECs.<sup>42/</sup> With respect to CMRS providers who seek to provide fixed services, the Commission explained that the regulatory treatment to be afforded those providers is being addressed in the CMRS Flexibility Proceeding.<sup>43/</sup> Since a complete record on this

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<sup>40/</sup> First Report ¶ 1043. AirTouch also supports the petition filed by CTIA, which seeks clarification that the Commission did not intend to extend access charges to inter-MTA CMRS traffic which currently is not subject to such charges. Petition for Limited Clarification of the Cellular Telecommunications Industry Association, p. 3.

<sup>41/</sup> Petition for Reconsideration by the Public Utilities Commission of the State of Colorado, pp. 7-8.

<sup>42/</sup> First Report ¶ 1004.

<sup>43/</sup> First Report ¶ 1005, citing, Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rule Making, FCC 96-283 (released August 1, 1996).

subject is being developed in that proceeding, it is inappropriate for PUCC to request a ruling on this issue in this proceeding.

15. PUCC's stated intention to treat CMRS carriers providing local loop services as LECs is inconsistent with the First Report. The First Report provides that

because the determination as to whether CMRS providers should be defined as LECs is within the Commission's sole discretion, state are preempted from requiring CMRS providers to classify themselves as 'local exchange carriers' or be subject to rate and entry regulation as a precondition to participation in interconnection negotiations and arbitrations under Sections 251 and 252.<sup>44/</sup>

Accordingly, the Commission should reject PUCC's suggestion as both untimely and the stated goal -- regulating CMRS -- as against the public interest.

**IV. The FCC Should Delineate The Scope Of Its  
Authority Over LEC-CMRS Interconnection  
Pursuant to Sections 332 And 2(b)  
Of The Communications Act**

16. The Public Service Commission of Wisconsin ("PSCW") requests that the Commission withdraw from, or curtail complaints under, Section 208 of the Communications Act, asserting that sanctions for violations of the duty to negotiate in good faith are within the state commission's

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<sup>44/</sup> First Report ¶ 1004.

jurisdiction.<sup>45/</sup> In light of PSCW's request, AirTouch urges the Commission to clarify the extent of its jurisdiction under Sections 2(b), 201 and 332 of the Communications Act. Regardless of the action the Commission takes with respect to forbearing from enforcement proceedings under Section 208, the Commission should make clear its independent jurisdiction over LEC-CMRS interconnection under Section 332 of the Act.

17. The Commission found that "section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection," but declined to "define the precise extent of that jurisdiction" in the First Report.<sup>46/</sup> Comcast/Vanguard request that the Commission make an explicit finding that it has exclusive jurisdiction over LEC-CMRS interconnection.<sup>47/</sup> The Commission's jurisdiction arises from Section 332 of the Act, which amended Section 2(b) of the Act to preempt state regulation

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<sup>45/</sup> Petition for Reconsideration by Public Service Commission of Wisconsin, pp. 8-9.

<sup>46/</sup> First Report ¶ 1023.

<sup>47/</sup> Joint Petition for Reconsideration and Clarification filed by Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc., pp. 22-23.

of CMRS rates and entry.<sup>48/</sup> Section 332, in conjunction with Section 201 of the Act provides the Commission with an independent basis for jurisdiction over LEC-CMRS interconnection.

18. AirTouch supports the Comcast/Vanguard request. Both before and after the release of the First Report, states and carriers have been arguing whether LEC-CMRS interconnection issues are appropriately within the states' jurisdiction. AirTouch agrees with Comcast/Vanguard that the Communications Act is clear on this point. The Commission has independent jurisdiction under Sections 201 and 332 over LEC-CMRS interconnection issues. This distinction between CMRS providers and other telecommunications carriers is pertinent now -- when carriers are beginning to appear before state commissions seeking to negotiate interconnection agreements. Once these agreements have been finalized and approved by the state commissions, a Commission declaration of its independent jurisdiction over these issues may be rendered meaningless. Furthermore, the state PUCs have no incentive not to

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<sup>48/</sup> As the Commission knows, AirTouch has filed an Appeal of the Eighth Circuit's Stay Order on the basis that Section 332 amended Section 2(b) with respect to LEC-CMRS interconnection.

subsidize local exchange service by imposing unreasonable interconnection rates on CMRS providers.<sup>49/</sup>

19. A declaration of the Commission's jurisdiction under Sections 332, 2(b) and 201 also is timely in light of the Eighth Circuit's stay of portions of the First Report. The Court's decision that the Commission lacks jurisdiction over interconnection matters was based upon the fact that the Telecommunications Act of 1996 did not modify Section 2(b) of the Communications Act. What the Court's opinion fails to reflect is consideration of the modifications to Section 2(b) effected by Section 332 in 1993.<sup>50/</sup> The Commission should take this opportunity to delineate its jurisdiction over LEC-CMRS interconnection under Sections 332 and 201 of the Communications Act.

**V. The Right To Non-Discriminatory Access  
To Ducts, Poles, Conduits, or Rights  
Of Way Should Be Reaffirmed**

20. Certain utilities have requested that the Commission clarify the extent to which internal

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<sup>49/</sup> See, Address by FCC Chairman Reed E. Hundt, "Antitrust and Interconnection: Old Wine in New Bottles," Antitrust Conference for Corporate General Counsel (October 22, 1996).

<sup>50/</sup> Section 332 explicitly states "Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile radio service or any private mobile radio service..." 47 U.S.C. § 332(c)(3)(A).



communications of utilities and the use of some, but not all, utility facilities for wire communications trigger the access provisions in Section 244(f) of the Communications Act.<sup>51/</sup> The requested clarifications should be denied, and the rights of access should be reaffirmed.

**A. Access to Any Facilities for Wire Communications and/or Internal Communications Triggers The Obligation to Provide Access to All Telecommunications Carriers**

21. The Commission concluded in the First Report that "the use of any utility pole, duct, conduit, or right-of-way for wire communications triggers access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility, including those not currently used for wire communications."<sup>52/</sup> The Commission also found that "the definition of 'wire communication' is broad and clearly encompasses an electric utility's internal

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<sup>51/</sup> Petition for Reconsideration and/or Clarification of the First Report and Order on behalf of American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power Company, Entergy Services, Inc., Northern States Power Company, The Southern Company and Wisconsin Electric Power Company, pp. 40-45; Request for Reconsideration and Rehearing of First Report and Order by Consolidated Edison Company of New York, Inc., p. 10; and Florida Power and Light Company's Petition for Reconsideration and/or Clarification of the First Report and Order, pp. 37-42.

<sup>52/</sup> First Report ¶ 1173.